

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 106360 a/se	FOR FURTHER ACTION	
See Form PCT/PEA/416		
International application No. PCT/EP2004/013339	International filing date (day/month/year) 24.11.2004	Priority date (day/month/year) 24.11.2003
International Patent Classification (IPC) or national classification and IPC INV. A61F2/06		
Applicant ANGIOMED GMBH & CO. MEDIZINTECHNIK KG et al.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input checked="" type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application 		
Date of submission of the demand 25.01.2006	Date of completion of this report 04.01.2007	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized officer Smith, Colin Telephone No. +31 70 340-4018	



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/013339

Box No. I Basis of the report

1. With regard to the language, this report is based on
 - the international application in the language in which it was filed
 - a translation of the international application into , which is the language of a translation furnished for the purposes of:
 - international search (under Rules 12.3(a) and 23.1(b))
 - publication of the international application (under Rule 12.4(a))
 - international preliminary examination (under Rules 55.2(a) and/or 55.3(a))
2. With regard to the elements* of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-20 as originally filed

Claims, Numbers

1-21 as originally filed

Drawings, Sheets

1/7-7/7 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
- 3. The amendments have resulted in the cancellation of:
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):
- 4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - the description, pages
 - the claims, Nos.
 - the drawings, sheets/figs
 - the sequence listing (*specify*):
 - any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

the entire international application,
 claims Nos. 19,21

because:

the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
 the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*).
 no international search report has been established for the said claims Nos. 19,21
 a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:
 furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.
 furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.
 pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b) and 13ter.2.
 a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Preliminary Examining Authority in a form and manner acceptable to it.
 the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
 See separate sheet for further details

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N) Yes: Claims 1-18,20

No: Claims

Inventive step (IS) Yes: Claims 1-18,20

No: Claims

Industrial applicability (IA) Yes: Claims 1-18,20

No: Claims

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

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(SEPARATE SHEET)**

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Re Item III

Rule 39.1 (iv) PCT - Method for treatment of the human or animal body by surgery

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following document:
D1: US 2003/109886 A1 (KEEGAN ET AL) 12 June 2003 (2003-06-12)
2. Document D1, which is considered to represent the most relevant state of the art, discloses (see whole document) "A catheter device for delivery and implantation of a self-expanding implant with a first shaft member being a push wire and a second shaft member being a pull tube"

From this, the subject matter of independent claim 1 differs from this known catheter in that the first shaft member is a pull wire and the second shaft member is a pusher tube.

- 2.1 The subject-matter of claim 1 is therefore novel (Article 33(2) PCT).

The problem to be solved by the present invention may be regarded as reducing or eliminating the need for compensation of axial strain of the implant prior to deployment.

- 2.2 The solution to this problem proposed in claim 1 is the fact that the pusher element is a tube and therefore has a more inherent resistance to elastic axial compression than a wire. Hence, the present application is considered as having an inventive step (Article 33(3) PCT).
- 2.3 Claims 2-18 and 20 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

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Re Item VII

1. Independent claims are not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
2. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
3. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document D1 is not mentioned in the description, nor is this document identified therein.